

## **REMARKS**

The issues outstanding in this application are as follows:

- Claim 7 is rejected under 35 USC 112;
- Claims 7 and 9 are rejected under 35 U.S.C. § 102(e);
- Claim 11 is rejected under 35 U.S.C. § 103(a); and
- Claim 10 is rejected under 35 U.S.C. § 103(a).

### **Claim amendments**

New claims 14-26 had been added to more clearly define the subject invention. New independent claim 14 now recites an environmentally friendly package that includes two compostable sheets, each sheet comprising an outer substrate layer and an inner multilayer sealing film, the inner sealing film having a core of a high-melting-point and a surface layer of a lower melting point. The sheets each have a top and bottom seam and side edge seams, wherein the two sheets are bonded together in a face-to-face relationship in which the top and side edge seams are bonded together with a high sealing strength using temperatures higher than 160° C and the bottom seams are bonded with a low sealing strength using temperatures of about 100° C to 150° C. New independent claim 22 recites the method of manufacture of the package of claim 14. Claims 9 and 10 now depend from claim 14 and claims 7, 8 and 11 have been cancelled. No new matter has been added.

### **35 USC § 112**

Claim 7 is rejected under 35 USC 112, second paragraph as being indefinite for failing to distinctly claim the subject matter of the invention. Since claim 7 has been cancelled, Applicant respectfully submits that this rejection is now moot.

### **35 USC § 102(e)**

Claims 7 and 9 are rejected under 35 U.S.C. § 102(e) as being anticipated by Tankersley (U.S. Patent No. 6,957,915) as evidenced by Hanyu *et al.* (U.S. Publication No.

2002/0176974). Applicant respectfully traverses this rejection as being moot as claim 7 has been cancelled and claim 9 now depends upon new claim 14.

Tankersley is directed to a standup bag manufactured from a co-extruded multi-layered heat sealable film. The heat sealable film 30 is manufactured with an inside layer that can be sealed at a lower temperature than the outer exterior layers. The method for producing the standup bag comprises the steps of wrapping a single piece of heat sealable film, having top and bottom edges and first and second side edges, around a tube to continuously form the front wall, the two side walls, and the rear wall. The first and second side edges are sealed to each other to close the rear wall and the two side walls are folded inwardly between the front and rear walls so as to form gussets in the top portion and the bottom portion. The bottom edge is sealed to form the bottom portion and the bag is filled with a predetermined material. The top edge is then sealed to form the top portion and a perforation is inserted in the top portion for opening the bag and to form a spout for pouring out the material in the bag when the bag is opened. An integral handle is formed in the top portion. All of the heating sealing is done without using a cooling medium for controlling the temperature of the film. As shown in Fig. 9, the packaging of Tankersley has regions in which the film is bonded back-to-back and regions where the film is bonded face-to-face.

The Hanyu references is directed to heat-seal polymer film and method of forming such film. The heat-seal film is formed from metallocene-catalyzed isotactic random copolymers of propylene and at least one other C<sub>sub.2</sub> to C<sub>sub.8</sub> alpha olefin, such as ethylene random. Hanyu teaches that heat-seal strength is often measured in terms of "hot-tack" performance and hot tack refers to the strength of the semi-molten seal at the interface between two film surfaces.

Anticipation of a claim is only established where "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). Regarding new independent claims 14 and 22, Applicant asserts that Tankersley fails to teach all elements of independent claims 14 and 22. This is because the Tankersley reference does not disclose a method of producing a package or a package that includes two compostable sheets, each sheet comprising an outer substrate layer and an inner

multilayer sealing film, the inner sealing film having a core of a high-melting-point and a surface layer of a lower melting point. The sheets each have a top and bottom seam and side edge seams, wherein the two sheets are bonded together in a face-to-face relationship in which the top and side edge seams are bonded together with a high sealing strength using temperatures higher than 160° C and the bottom seams are bonded with a low sealing strength using temperatures of about 100° C to 150° C

In Tankersley, the bag is formed by wrapping a single piece of heat sealable film, having top and bottom edges and first and second side edges, around a tube to continuously form the front wall, the two side walls, and the rear wall. The first and second side edges are sealed to each other to close the rear wall and the two side walls are folded inwardly between the front and rear walls so as to form gussets in the top portion and the bottom portion. The bottom edge is sealed to form the bottom portion and the bag is filled with a predetermined material. The top edge is then sealed to form the top portion and a perforation is inserted in the top portion for opening the bag and to form a spout for pouring out the material in the bag when the bag is opened. The Hanyu reference does not cure the deficiencies of the Tankersley reference.

If an independent claim is not anticipated under 35 U.S.C. § 102(e) , then any claim depending therefrom is by definition not anticipated. Applicant respectfully submit that claim 9 depends at least in part from independent claim 14 as well as the new dependent claims 15-21. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claim 9 under 35 U.S.C. § 102(e) as being anticipated by Tankersley (U.S. Patent No. 6,957,915) as evidenced by Hanyu *et al.* (U.S. Publication No. 2002/0176974).

35 USC § 103(a)

**Claim 11** is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tankersley (U.S. Patent No. 6,957,915). Applicant respectfully traverses this rejection as being moot as claim 11 has been cancelled.

**Claim 10** is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tankersley (U.S. Patent No. 6,957,915) in view of Jerdee et al (U.S. Patent No. 6,333,087). Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention of claim 14 over the Tankersley reference obviates this rejection. The Jerdee reference adds no new teaching to the Tankersley reference that would result in the inventive package of new claim 14. Claim 10 now depends at least in part on new claim 14. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of its dependency from claim 14, claim 10 is nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,957,915 to Tankersley in view of U.S. Pat. No. 6,333,087 to Jerdee et al.

### **CONCLUSION**

In view of the above, Applicant believes the pending application is in condition for allowance.

A fee for the RCE is being submitted with this response. If additional fees are due, please charge our Deposit Account No. 06-2375, under Order No. HO-P03292US0 from which the undersigned is authorized to draw.

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Respectfully submitted,

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